The primary object of the Act is to protect the public from claims to legal services by unauthorized persons. Parties who prefer to have their disputes resolved through arbitration rather than by court proceedings are no less members of the public. Their common law right to retain whomsoever (from the category of unauthorized persons) they desire or prefer for their legal services in arbitration proceedings in Singapore has, in my view, been taken away by the Act. Such freedom of choice is now limited to a choice from amongst authorized persons where the dispute in question involves questions of law and legal rights and obligations. This does not mean that only advocates and solicitors of the Supreme Court may appear in arbitration proceedings. But it means that only those with practising certificates may practise law in arbitration proceedings.

For the above reasons, I am of the view that D&P's representation of the respondents at the arbitration proceedings in Singapore will contravene section 29(1) and/or section 30(1) of the Act. Accordingly, the applicants succeed in this application and I order that the interim injunction granted by this court on 18 August 1987 be made permanent. The respondents will pay costs of the applicants in this proceeding.

Order accordingly.

Solicitors: *Shook Lin & Bok; Cooma Lau & Loh & M. Karthigesu.*

REEBOK INTERNATIONAL LTD. v. NG WHYE THO t/a REEBOK SPORTS

[O.C.J. (Chan Sek Keong J.C.) 30 March 1988]

[Singapore – Motion in Suit No. 2312 of 1987]

Civil Procedure – Contempt of court – Order of court not complied with – Undertaking given to comply with order of court – Whether order of court still in force – Whether subject matter of contempt proceedings should be order of court or undertaking.

In this case, the applicants made an application to commit the respondent to prison for contempt of court for not obeying an order of court. The respondent had, however, after the failure to obey the order of court, given an undertaking to comply with the order of court. The respondent raised a preliminary objection to the present application. The respondent contended that it was defective on the ground that the order of court has been superseded by the undertaking. The contention of the respondent was that the order of court was no longer operative in view of the undertaking and that committal proceedings can only be brought for breach of the undertaking.

Held, dismissing the preliminary objection: the undertaking given by the respondent was not given in lieu of the order of court but in lieu of the applicants agreeing to withdraw their application for committal. The learned judge, in not committing the respondent and accepting his undertaking, was merely giving him another opportunity to abide by the order of court. The order of court remained in force and nothing that had happened up to then had diminished or affected its operation.

Case referred to;

(1) *Hussain* v. *Hussain* [1986] 1 All E.R. 961 (expld).

MOTION.

Tan Woon Tiang for the plaintiffs/applicants.

N.S. Kang for the defendant/respondent.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an application by the applicants to commit the respondent to prison for contempt of court on the following grounds:

(1) On 28 August 1987, the applicants obtained an order of court ("the order of court") which, *inter alia,* directed the respondent, within seven days of the service of the said order on him, to file and serve on the applicants' solicitors an affidavit setting forth, so far as was known to the respondent, the names and addresses of all persons, firms or companies:

(a) to whom the respondent had supplied;

(b) from whom the respondent had obtained supplies; and

(c) who have ordered from the respondent

any of the "Reebok" shoes referred to in paragraph 1 of the order of court and do disclose in such affidavit the dates of each such supply by or to the respondent, and the quantities and consideration therefor, and do exhibit to the said affidavit copies of all relevant documents including invoices, bills, receipts, shipping documents, orders, contracts, letters of credit and copies thereof relating thereto and which are in the respondent's possession, custody or control.

(2) The order of court was served on the respondent by leaving a copy thereof at the office of the respondent on 28 August 1987 and by serving the same on the respondent's solicitors at their request on 2 September 1987.

(3) The respondent failed to file an affidavit in compliance with the order of court and thereupon the applicants applied for an order of committal against the respondent. At the hearing of the applicants' motion for committal on 27 November 1987, the applicants were granted leave by the court to withdraw their application for committal upon counsel for the respondent giving an undertaking to the court that the respondent would file the requisite affidavit within seven days thereof.

(4) The respondent failed to file the affidavit within seven days but only on 7 December 1987, *i.e.* ten days from the date of the giving of undertaking.

(5) The applicants' case was that the affidavit filed on 7 December 1987 did not disclose all the relevant information and numerous exhibits were omitted therefrom. On being requested twice by the applicants' solicitors to do so, the respondent filed a supplemental affidavit on 18 December 1987. Again, the applicants' solicitors were not satisfied and pointed out to the respondent's solicitors that the supplemental affidavit did not disclose all relevant information.

(6) On 29 December 1987, the applicants applied for and obtained leave of the court to apply for a committal order against the respondent.

Counsel for the respondent has raised a preliminary objection to this application. His contention is that as the application is based on the respondent's failure to comply with the order of court and not on the undertaking given on 27 November 1987, it is defective on the ground that the order of court has been superseded by the undertaking. His submission is that the order of court is no longer operative in view of the undertaking and that committal proceedings can only be brought for breach of the undertaking.

Counsel referred to *Hussain* v. *Hussain*[1] in support of his contention. In that case, the husband, by his counsel, gave, in the course of divorce proceedings, an undertaking to the court not to molest his wife. He was present in court when this undertaking was given. The undertaking was recited in a formal order of the court but the operative part dealt only with the withdrawal by the wife of an application to commit the husband to prison and with costs. The order, which was not indorsed with a penal notice, was issued to the wife's solicitors but never served on the husband.

The husband failed to carry out his undertaking and an application was made by the wife to commit him for breach of the undertaking. The judge hearing the application to commit dispensed with service of the original order and made the order for committal. The husband appealed to the Court of Appeal contending (i) that the original order was defective because it had not been indorsed with a penal notice and had not been served on him and (ii) that the committal order was defective because it did not record that service of the original order had been dispensed with. The husband conceded that he understood the undertaking given by him.

The Court of Appeal dismissed the appeal on the ground that the husband had breached the undertaking and that the order recording the undertaking did not require a penal notice. In the course of the judgment, Sir John Donaldson M.R. said:

> "Let it be stated in the clearest possible terms that an undertaking to the court is as solemn, binding and effective as an order of the court in the like terms and that the contrary has never been suggested. What has been suggested by counsel for the wife, with the support of *amicus curiae*, is that the procedural requirements for enforcement are not as strict in the case of an undertaking as in the case of an order because CCR Order 29 rule 1 and RSC Order 45 rule 5, which is the equivalent rule in the Supreme Court, have no direct application to committal for breach of an undertaking. Having now been referred to the authorities, I have no doubt that this submission is well founded. Undertakings may be recorded in an order of the court, as occurred in this case, but it is the undertaking and not the order which requires the giver of the undertaking to act in accordance with its terms. If he fails to do so, he acts in breach of the undertaking, but cannot be said to refuse or neglect to act in accordance with the order which happens to record the undertaking or to disobey that order and it is to those offences alone that these two rules apply."

Counsel for the respondent relies on this paragraph to support his argument that the respondent may only be committed for breach of the injunction but not of the court order. He has suggested that in *Hussain* v. *Hussain*,[1] an injunction had been originally granted (although it was not expressly stated in the report) for which was substituted the undertaking of the husband and that the above passage implied that the original injunction was no longer in force.

In my view, counsel has misunderstood the words of the Master of the Rolls. His Lordship was not, in that passage, referring to the original injunction in respect of which the first application

to commit was withdrawn after the husband gave his undertaking, but to the order which incorporated the undertaking of the husband. The subsistence of the original injunction was not in issue at all. In my view, it does not follow that because the wife elected to commit the husband for breach of the undertaking that she would not have been able to commit him for breach of the injunction if she had so elected. Neill L. J. in his judgment commented on the practice that should be followed in committal proceedings where an undertaking had been given in lieu of an injunction. His Lordship could have been referring to a hypothetical situation. If he had in mind the case before him, then we must assume that in that case the husband's undertaking was given in lieu of the original injunction.

In the present case, the undertaking given by the respondent was not given in lieu of the order of court but in lieu of the applicants agreeing to withdraw their application for committal. To my mind, the learned judge, in not committing the respondent and accepting his undertaking, was merely giving him another opportunity to abide by the order of court. The order of court remained in force and nothing that had happened up to then had diminished or affected its operation.

Counsel for the respondent submitted that the undertaking and the order of court could not subsist side by side on the ground that if the respondent had complied with the order of court, he might still be liable for breach of his undertaking. This is not a valid argument for two reasons. Firstly, this contingency could not happen in the present case because compliance with the order of court would automatically result in compliance with the undertaking and *vice versa*. Secondly, there is no reason why in principle a party may not be committed for contempt of court for breach of a court order as well as an undertaking given in respect thereof. He can still be guilty of two acts of contempt in respect of the same matter but no court is likely to punish the contemnor twice in respect of the same matter.

Accordingly, I hold that the preliminary objection is misconceived. I will now hear submissions on the merits of the application to commit.

Order accordingly.

Solicitors: *Arthur Loke & Partners; N. S. Kang.*

MARITIME (PTE.) LTD. v. ETPM S.A.

[A.C.J. (Thean J.) 29 March 1988]

[Singapore – Admiralty in Personam No. 346 of 1986]

Shipping – Claim for costs of repairs – Service of writ made without obtaining leave of court – Service made within limitation period – Service irregular – Whether irregularity should be cured – Whether alternative course should be adopted – R.S.C. 1970, O. 10 r. 2.

Civil Procedure – Service of writ – Made without obtaining leave of court – Service made within limitation period – Service irregular – Whether irregularity should be cured – Whether alternative course should be adopted – R.S.C. 1970, O. 10 r. 2.

The plaintiffs instituted an action against the defendants claiming a certain sum of money. The writ was taken out on 8 July 1986, a few days before the period of limitation set in, and was served on an agent of the defendants in Singapore. The defendants were outside the jurisdiction of the court and no leave was obtained under Order 10 rule 2 of the Rules of the Supreme Court for service of the writ on the defendants' agent in Singapore. A conditional appearance was entered by the defendants without prejudice to their application to apply to court to set aside the service.

On 8 June 1987, the defendants applied for an order to set aside the writ of summons and/or set aside the service of the writ. On 10 June 1987, the plaintiffs applied for, *inter alia*, an order that the plaintiffs' service of the writ on the defendants' agent be deemed good service on the defendants or, alternatively, an order that the said service be set aside and the service of the writ and a copy of the order be effected by serving the same on the defendants' agent in Singapore and that such service be deemed good and sufficient service.

Both applications were heard together before the learned Assistant Registrar. The learned Assistant Registrar exercised his discretion and cured the irregularity by validating the service of the writ on the defendants' agent. He dismissed the defendants' application. The defendants appealed.

Held, dismissing the appeal: the learned Assistant Registrar had properly exercised his discretion and was justified in the circumstances in making the orders which he made.

Case referred to:

(1) *Leal* v. *Dunlop Bio-Processes International Ltd.* [1984] 2 All E.R. 207 (distd).

APPEAL AGAINST REGISTRAR'S DECISION.

Steven Chong for the plaintiffs.

Laurence Boo for the defendants.

Cur. Adv. Vult.